



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 29, 2023

IN THE MATTER OF:

Appeal Board No. 628852

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 30, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 30, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 14, 2023 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case No. 022-20439 and overruled the initial determinations.

The employer appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determinations. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed by a city agency's correctional department as a licensed barber for three years until October 31, 2021. During his employment, the employer required him to test weekly for COVID-19. However, in mid-October 2021, pursuant to the New York City Department of

Health mandate, the employer informed him that he must receive a COVID-19 vaccination by October 29, 2021. The employer permitted employees to request a reasonable accommodation. The claimant never requested a religious or medical accommodation because he did not have a religious or health reason for refusing to receive the vaccination. He refused to become vaccinated because he wanted to continue to test weekly. On October 31, 2021, the employer placed the claimant on a leave of absence because he refused to become vaccinated. By letter dated February 15, 2022, the employer informed the claimant that his employment ended because he did not receive the COVID-19 vaccination.

OPINION: The credible evidence establishes that the claimant's employment ended when he chose to be separated from employment rather than receive a COVID-19 vaccination as mandated by the employer's known policy. The employer provided the opportunity for an employee to request an exemption; however, the claimant did not apply for either a religious or medical exemption from complying with the employer's mandate. In fact, the claimant admitted "I had no health issues" and "I would not use my religion...based on what my belief is, it wouldn't prevent me from taking the vaccine."

We find that the employer's vaccine requirement, implemented during a pandemic, to protect the health and safety of its employees, was reasonable given the circumstances of the ongoing pandemic. The claimant's reason for his refusal that he should only be tested weekly does not exempt him from complying with the employer's reasonable policy mandating COVID-19 vaccination. The claimant has failed to establish a compelling reason for his noncompliance with the employer's reasonable directive. Significantly, the claimant could have preserved his employment by complying with the employer's requirement. We find that the claimant's failure to do so was a voluntary act that brought about his separation from employment. Accordingly, we conclude that the claimant voluntarily separated from employment without good cause. As the claimant's separation was voluntary, there is no need to rule on the alternate determination of misconduct.

Finally, we note that the claimant had submitted video clips prior to the adjourned hearing and that Judge did not consider those clips during the adjourned hearing. We have examined those clips and find that they have no relevance to how the claimant's employment ended.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 30, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER